Supreme Court, U.S.
FILED
SEP 23 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-310

In The

Supreme Court of the United States

OCTOBER TERM, 1985

MONTGOMERY WARD & CO., INCORPORATED,
Petitioner,

v.

MARJORIE LOUISE DABNEY,
Respondent.

BEST AVAILABLE COPY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN RESISTANCE

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15 pp

QUESTIONS PRESENTED

Did the Court of Appeals properly permit the assessment of judgment interest from the date of filing of Plaintiff's complaint to the date of judgment entry on February 9, 1984, under the provisions of § 535.3 of the Code of Iowa?

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RESPONDENT'S BRIEF IN RESISTANCE

The Respondent, Marjorie Louise Dabney, respectfully requests that the Court deny the petition for certiorari, seeking review of the Eighth Circuit's opinion of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

Respondent adopts the statement of Opinions Below contained in the Petition at Page 2.

JURISDICTION

Respondent adopts the statement of Jurisdiction contained in the Petition at Page 2.

STATUTES INVOLVED

Respondent adopts the statement of Statutes Involved contained in the Petition at Page 3.

STATEMENT OF THE CASE

On October 12, 1979, Marjorie Louise Dabney filed her complaint in the United States District Court for the Southern District of Iowa against Montgomery Ward & Co., Inc., for damages she sustained as a result of personal injuries caused by her use of a defective product marketed by Montgomery Ward. On September 3, 1981, judgment was entered against Montgomery Ward for $1,000,000, which judgment was subsequently vacated and the cause remanded for retrial by the United States Court of Appeals for the Eighth Circuit in its decision reported at 692 F.2d 49.

Retrial was held and on February 9, 1984, judgment was entered against Montgomery Ward for $2,000,000 with interest at the rate of 10% from the date of filing of the complaint until February 9, 1984, pursuant to § 535.3 of the Code of Iowa, as amended; and with interest from February 9, 1984, until paid at the rate of 9.87% pursuant to the provisions of 28 U.S.C. § 1961.

Montgomery Ward appealed the second judgment entry and on May 9, 1985, the Court of Appeals affirmed the same. Thereafter, Montgomery Ward filed its Motion to Certify Question to State Court, which motion was denied by the Court's Order dated July 1, 1985.

The sole issue for which review is sought by Montgomery Ward in this Court is whether § 535.3 of the Code of Iowa was correctly applied in permitting interest to accrue on the judgment entry of February 9, 1984, from the date of the filing of Marjorie Dabney's complaint on October 12, 1979.

REASONS FOR DENYING THE WRIT

The decision of the United States Court of Appeals for the Eight Circuit, permitting the assessment of judgment interest from the date of filing of the complaint on October 12, 1979, to the date of the judgment entry on February 9, 1984, was based upon the clear and unambiguous directive of § 535.3 of the Code of Iowa that interest on judgments "shall accrue from the date of the commencement of the action."

Effective January 1, 1981, § 535.3 was amended by the Iowa Legislature to provide for the assessment of interest on judgments from the date of the commencement of the action rather than from the date of the judgment entry as had been the rule prior to the effective date of the amendment. Since the enactment of the amendment, the Supreme Court of Iowa has made no exceptions to the directive of § 535.3 because of judgment vacation, remand, and retrial

of a cause prior to the entry of a judgment for which interest is assessed.

It must be understood that Petitioner has not been assessed interest on the judgment first entered on September 23, 1981, and subsequently vacated. The assessment of judgment interest is solely upon the second judgment entry dated February 9, 1984, and subsequently affirmed by the Court of Appeals. The cases cited by Petitioner dealing with interest on vacated or reversed judgments do not apply to the case at bar. Nor does the decision of the Supreme Court of Iowa in Muchmore Equipment, Inc., v. Grover, 334 N.W. 2d 605 (Iowa 1983) constitute authority for the proposition advanced by Petitioner.

A careful examination of the Muchmore decision reveals that two judgment entries were under consideration by the Iowa Supreme Court, one entered prior to the effective date of the amendment to § 535.3 and the other judgment entered subsequent to the effective date thereof. The language quoted by Petitioner from the Muchmore decision deals with the judgment entered prior to the effective date of the amendment. As to the judgment entered subsequent thereto, judgment interest was computed from the date of the commencement of the action.

The decision of the Court of Appeals interpreting the clear mandate of § 535.3 of the Code of Iowa, as amended, is not in conflict with (1) any decision of the Iowa Supreme

Court; (2) the decision of any other federal court of appeals on the same matter; and does not involve a federal question. Petitioner alleges that denial by the Court of Appeals of Petitioner's motion to certify the question concerning prejudgment interest to the Supreme Court of Iowa raised "serious constitutional and judicial administration issues." However, in considering whether the Court's refusal to certify had so far departed from the accepted and usual course of judicial proceedings as to warrant the issuance of a writ, it should be noted that not only was there no judicial conflict with the Court's interpretation of § 535.3, but also that Petitioner did not apply for the certification of the question to the state court until after the Court of Appeals affirmed the District Court's judgment entry. Certainly, if Petitioner believed, as it alleges, that the issue involving prejudgment interest was unclear under the present state of Iowa common law, it would have requested such certification prior to the Court's ruling for the purpose of assisting the Court in the resolution of that issue.

CONCLUSION

A writ of certiorari should not issue for the reason that further review by this Court is unwarranted under the guidelines by Rule 17 of the Supreme Court Rules.

Respectfully submitted,

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APPENDIX

JUDGMENT ON JURY VERDICT

United States District Court
for the
SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

MARJORIE LOUISE DABNEY,
Plaintiff,
vs.
MONTGOMERY WARD & CO., INC.,
Defendant.

CIVIL ACTION FILE NO. 79-141-D-2
FILED Feb. 9, 1984
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

This action came on for trial before the Court and a jury, Honorable Ronald E. Longstaff, United States District Magistrate presiding. The issues having been duly tried and the jury having duly rendered its verdict, it is ordered and adjudged that the Defendant Montgomery Ward & Co., Incorporated, take nothing and that Plaintiff Marjorie Louise Dabney recover of the Defendant Montgomery Ward & Co., Inc., the sum of Two Million Dollars and No Cents ($2,000,000.00) with interest at the rate of Ten Per Cent (10%) from date of filing of the complaint, October 12, 1979, until February 9, 1984; and with interest from February 9, 1984 at the rate of 9.87% until paid, plus her costs of action.

Dated at Davenport, Iowa, this 9th day of February, 1984.

JAMES R. ROSENBAUM
Clerk of Court

By: Diane L. Duncan
Deputy Clerk